UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- :

: **S1 09 Cr. 62 (CM)**

JOSEPH WATTS, :
a/k/a "Joseph Russo," :
a/k/a "Joseph Pietruszka," :

Defendant. :

- x

NOTICE OF ENTERPRISE EVIDENCE

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NOTICE OF ENTERPRISE EVIDENCE

The Government respectfully submits this memorandum to advise the Court and defense counsel of acts committed by the defendant Joseph Watts and others, in furtherance of the charged racketeering enterprise, the Gambino Organized Crime Family of La Cosa Nostra (the "Gambino Family"), that it may choose to offer as part of the evidence at trial that Watts participated in the charged conspiracy. In main part, the Government will seek to introduce evidence through the testimony of cooperating witnesses who were the defendant's accomplices and co-conspirators in the charged racketeering enterprise. This testimony will be supported in certain instances by tape recordings, crime scene evidence, financial records and other documentation, and lay and victim testimony. To the extent that before or during the trial the Government identifies additional acts or crimes that it will seek to introduce, the Government will provide prompt notice to the Court and defense counsel.[1]

A. The Indictment – Racketeering Conspiracy

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[1] The Government expects that John D'Amico will plead guilty on August 5, 2010 to a Superseding Information; this memorandum does not address enterprise evidence relating to D'Amico. Should that plea not occur for any reason, the Government will provide enterprise notice promptly thereafter.

Count One of the Superseding Indictment (the "Indictment") charges Watts with conspiring to participate in the affairs of a racketeering enterprise, from at least in or about 1980 through at least in or about March, 2009, in violation of 18 U.S.C. § 1962(d). (Indictment ¶ 13). The charged racketeering enterprise is the Gambino Family. (Indictment ¶¶ 1-8). Count One charges that Watts and his co-conspirators agreed to conduct and participate in the affairs of the Gambino Family through a pattern of racketeering activity comprised of multiple state and federal law violations. Specifically, the Indictment charges multiple state law violations involving murder, gambling and commercial bribery. The charged federal law violations include extortion, loansharking, obstruction of justice, witness tampering, operating an illegal gambling business, money laundering, mail fraud and wire fraud. (Indictment ¶ 15).

B. The Pattern of Racketeering Activity

The Government will prove that Watts was a high-level associate in the Gambino Family, was very close to multiple Gambino Family bosses (notwithstanding his role in killing one of them, Paul Castellano), and was afforded the privileges typically reserved for a Capo.[2] Given this status, Watts was aware that co-conspirators would commit a range of offenses as part of the charged RICO conspiracy. The pattern of racketeering activity discussed in this memorandum is focused primarily on racketeering conduct that Watts himself directly participated in. This pattern includes conduct set forth under the following headings below. The Government includes acts that it may offer into evidence at trial. The Government takes this broad approach to provide comprehensive notice to defense counsel and because the trial proceedings are of course unpredictable and depending upon the defense, cross-examination and any defense case the Government may choose to present more or less evidence of particular racketeering acts.

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[2] Watts could never be a made member of the Gambino Family owing to his Irish heritage.

1. Murder

Murder and attempted murder, including the murder of witnesses, are racketeering activities specified in the Indictment as objects of the racketeering conspiracy charged in Count One. (Indictment ¶¶ 12(c), 15(a), 15(f)). As part of his participation in the charged conspiracy, Watts committed or conspired to commit the eleven murders and attempted murders set forth below. The Government may offer proof of any of the following murders; however, with the exception of the Weiss murder, proof will likely be limited largely to the testimony of cooperating witnesses who knew Watts to have been involved with the murders.

a. Murder of Anthony Miano. In the late 1970s, members of the Gambino Family believed that Ronnie Miano was involved in the kidnapping of Manny Gambino, who was the nephew of Carlo Gambino, former boss of the Gambino Family. Ronnie Miano was killed in retaliation. Nonetheless, the Gambino Family wanted to kill Anthony Miano, Ronnie Miano's brother, as further retaliation for the kidnapping. During a chance meeting with Watts, Anthony Miano told Watts that Miano needed new tires for his truck. Watts lured Anthony Miano to Watts's residence in Staten Island by claiming to have tires which he could give to Miano. When Anthony Miano arrived and drove his truck into Watts's garage, Watts shot and killed him. Watts and another associate then abandoned Miano's truck and his corpse in Brooklyn. Watts later stated that he wanted to be the first person to attend Anthony Miano's wake so that he could view the "finished product."

b. Murders of Nicolina and Michael Lizak. In early 1982, several members of the Gambino Family learned that Nicolina and Michael Lizak had murdered Robert Russo, a

Gambino Family soldier and a friend of Watts's. Paul Castellano assigned responsibility for murdering the Lizaks in revenge to Watts, due to Watts's close relationship with Robert Russo. On March 5, 1982, Watts and other Gambino Family associates and members tortured and murdered the Lizaks in a social club on Staten Island. The Lizaks' corpses were never recovered.

c. Murder of John Cennamo. In 1984, John Cennamo was found hanging from a low tree limb behind a self service laundry in St. Albans. While the death was officially classified as a suicide, Watts, Angelo Ruggiero, and Willie Boy Johnson had actually killed Watts on the orders of Gotti Sr. because Cennamo was pressing the police to investigate the murder of Danny Silva, which had been at the hands of the Gambino Family.

d. Murders of Paul Castellano and Thomas Bilotti. In 1985, Paul Castellano decided to disband Gotti's crew of criminal associates. Gotti feared that Castellano would then have him killed. In response, Gotti formed a plan to murder Castellano and seize control of the Gambino Family, and recruited a hit team of loyal Gambino Family members and associates to accomplish the plan. Several weeks befor the murder, Gotti and members of his hit team moved into Watts's residence on Staten Island for personal security. On December 16, 1985, Gotti and his hit team executed Castellano and his underboss, Thomas Bilotti, as they attempted to enter Sparks Steak House in Manhattan. Watts, who was a member of the hit team, waited nearby as a "back-up" shooter in case the main shooters failed to kill Castellano and Bilotti. After the murders, Watts and the others left the area on foot.

e. Murder of Augustus Sclafani. In early 1986, Augustus (Gus) Sclafani, a Gambino Family soldier, began spreading a rumor that Gotti's underboss Frank DeCicco was an informant. Gotti sanctioned Sclafani's murder, and gave the murder contract to Watts. On March 10, 1986, Watts and other Gambino Family stabbed and shot Sclafani in a social club in Manhattan. Watts also disposed of Sclafani's body.

f. Murder of William Ciccone. On April 29, 1987, William Ciccone fired several shots at Gotti outside a Gambino Family social club in Ozone Park, New York. Gambino Family members detained Ciccone. Watts was directed to come to the social club. Once there, Watts took Ciccone to another location, where Watts and two others tortured Ciccone in an effort to learn the identities of any co- conspirators in the attempt on Gotti's life. After Ciccone confessed that he had acted alone, Watts and the others killed Ciccone. They then transported Ciccone's corpse to the basement of a candy store owned by one of Watts's accomplices. The group left the store briefly to get tools needed to bury Ciccone's body. While they were gone, the police entered the store in response to a reported burglary, and discovered Ciccone's corpse. Watts went into hiding for a period of time thereafter. Watts's fingerprints were found on a glass in the shop.[3]

g. Murder of Thomas Spinelli. In April 1989 Watts participated in the murder of Thomas Spinelli. Watts pled guilty to participating in a conspiracy to murder Spinelli in February 1996 as charged in Count 2 of S2 93 Cr. 294 (E.D.N.Y) and was sentenced to six years' imprisonment.

h. Murder of Louie Milito. Watts participated in the murder of Louie Milito.

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[3] Watts was tried in criminal court in Staten Island on state murder charges for the Ciccone murder, and was acquitted after certain evidence implicating Watts disappeared under mysterious circumstances. However, the Government takes the position that Watts was involved in the killing as described above.

Specifically, Watts and others buried the body at a horse farm on Sharot's Road, Staten Island (where Watts had buried Spinelli and intended to bury Weiss; all the bodies were moved at Watts's direction on several occasions when associates involved in the murders began cooperating).

i. Murder of Frederick Weiss. In 1989 Weiss was a defendant in a multi-defendant case captioned United States v. Paccione et al., pending in the Southern District of New York. As the case progressed, Weiss terminated a lawyer who regularly represented LCN members and associates and obtained a lawyer from the Legal Aid Society. John J. Gotti ("Gotti"), then Boss of the Gambino Family, suspected that Weiss was cooperating with the Government and ordered his murder, which he communicated to Watts. Watts then put together a team to commit the murder, including by obtaining the consent of co-defendant John D'Amico (then a Gambino Capo) to use members of D'Amico's crew in the plot. On or about September 10, 1989 Watts and others went to the home of Daniel Annunziata on Staten Island, where Annunziata was supposed to lure Weiss to his death. Watts assigned different Gambino members and associates to different tasks, including digging the grave where Weiss would be buried and lining Annunziata's garage floor with plastic wrap so that the body could be transported in an awaiting vehicle to the hole that had been dug for the body. Watts himself stood in Annunziata's garage, holding a gun, waiting to shoot Frederick Weiss upon his arrival. Watts also planned to kill Annuziata at the same time and claim that it was a "ricochet" accident. Annunziata, however, did not bring Weiss to his home and different shooters – also acting on Gotti's orders and in furtherance of the shared goal of murdering Weiss – found and killed Weiss at a different location the next day.

2. Loansharking

Loansharking is one of the racketeering activities specified in the Indictment as an object of the racketeering conspiracy charged in Count One. (Indictment ¶ 15(e)). The evidence will demonstrate that Watts was a major loanshark for the Gambino Crime Family, having substantial money "on the street" – particularly in Stated Island – from the 1980s and continuing after he was incarcerated in November 1995.

Watts was known in the Gambino Family as a "shylock's shylock" – meaning that he acted as a primary lender for others who were actually lending money to street customers. Watts took over the loanshark of several other Gambinos as he grew in power within the Family. When Soldier Robert Russo (a friend of Watts) was murdered in 1981, Watts took over his loanshark book. Similarly, in December 1985, Thomas Billoti, the newly-appointed acting Underboss for Paul Castellano (former Boss) was murdered (along with Castellano) by a crew working for Gotti, Sr. When Gotti, Sr. took over the Family, Watts (who was very close to Gotti) was allowed to take over Billoti's loanshark book in Staten Island which involved millions of dollars on the street. Finally, after Frank DeCicco (a powerful Capo/Underboss close to Gotti, Sr.) was murdered in 1986, Watts took over DeCicco's loanshark book (with Gotti, Sr.'s approval). Watts had numerous people who collected money for him, including Dom Borghese, Johnny Rizzo, Roger Ritch, Anthony Galletta, George Smith, Eddie Fisher. In total, Watts had over $1 million dollars "on the street" which would have generated $20,000-$30,000 a week for Watts.

Even after Watts was incarcerated in 1995, Watts's associates continued to lend and collect money on his behalf, including Roger Ritch and George "Jackie" Smith (now deceased) .

Watts was incarcerated between 1995 and 2006. When he was released from prison in 2006 he began acting as a loanshark again, including loaning money through Brian Greenwald and Abe Berger, as discussed elsewhere in this memorandum.

3. Extortion

Extortion is one of the racketeering activities specified in the Indictment as an object of the racketeering conspiracy charged in the Indictment. (Indictment ¶ 15(d)).

a. Extortion relating to loansharking and other debt collection.

Watts used violence and the threat of violence to collect debts due to him and others in the Gambino family, including loansharking debts. Watts was successful in collecting loansharking debts because he had an (accurate) reputation as a well-connected killer for the Gambino Family.

In 2006 and 2007 Watts extorted Wail Al-Khatib, a long-time associate of Watts's who has assisted Watts in telephone calling card scams and who owed Watts money, which Watts attempted to collect in 2006 and 2007. Watts threatened Al-Khatib during phone conversations and in meetings, including attacking him at a restaurant. In January 2007, Watts's long-time associate John McNally, a retired NYPD detective who has performed various services for Watts, traveled from Florida to New York to try to collect at least $30,000 that Al-Khatib owed Watts. McNally engaged in a series of phone conversations with Al-Khatib on behalf of Watts and pressed Al-Khatib to meet with Watts to pay his debts. McNally told Al-Khatib, among other things, in series of hostile phone calls: "the fucking guy [Watts] says he is not leaving here until you get here" Al-Khatib was extremely fearful of Watts and ultimately fled.

During the same approximate time period Watts extorted Abe Berger, whom Watts had entrusted with between $350,000 and $400,000 cash while in prison, as discussed elsewhere in this memorandum in greater detail.

b. Extortion of Construction Industry And Other Businesses.

Throughout the 1980's, 1990's, and 2000's, the Gambino Family extorted various construction industry businesses in the New York City area. This extortion has generated tens of millions of dollars in proceeds for the Gambino Family. Watts was involved in many of these extortions. There will be testimony that some of the companies and individuals "with" Watts – i.e. paying him money in return for "protection" – included Big Apple, Interstate Industrial Construction Company, Tops Furniture Supply, Richard Addeo, Sally Barbeo and others. There will be testimony about Watt's efforts to retain control over these companies and individuals:

For example, Watts had the relationship on behalf of the Gambino Family with a construction company called Big Apple, which paid Watts and an associate of his, Gammarano, hundreds of thousands of dollars. On one occasion John Gotti Jr., DiLeonardo and others discussed killing Gammarano for not putting "on record" the full amount of money he was receiving and paying members of the Gambino Family their share. Watts intervened on Gammarano's behalf and told Gotti Jr., DiLeonardo and others that Gotti Sr. had given Watts "carte blanche" with the construction industry.

Anthony Rotondo had a company "with" him – Interstate Industrial Construction Company – that was previously with Rotondo's father. Around Christmas, 1988, Interstate's owners passed Rotondo $5,000 and said that they would need Rotondo's help in expanding. In late 1989 Rotondo learned from DeCavalcante Soldier Frank D'Amato that Gotti wanted

D'Amato and Rotondo to talk about Interstate because Joe Watts was making a claim for the company on behalf of the Gambino Family. Rontondo and D'Amato then met with Watts at John Gotti's social club. Watts told Rotondo that Interstate was with the Gambino Family, and Rotondo and D'Amato accepted it.

Watts controlled Teamsters Local 482 and Operating Engineers Local 14 and 15 and through his control over these unions was able to earn income and facilitate extortion in connection with the construction industry.

4. Fraud

Mail fraud and wire fraud are racketeering activities specified in the Indictment as an object of the racketeering conspiracy charged in the Indictment. (Indictment ¶¶ 15(j).

a. Phone Card Scheme

In the early and mid-1990s, Watts, and his associate Vincent Russo, and others in the Gambino Family made millions of dollars through a telephone calling card scheme. The scheme involved purchasing phone minutes in bulk (wholesale) and then issuing phone cards retail. Watts issued cards that did not function, or did not function for the advertised amount of minutes, and Watts also withheld money that was intended for the provider of wholesale minutes.

b. American Blast

After his release from prison, Watts initiated a scheme to defraud manufacturers and distributors of "American Blast" – an energy drink company Watts started. Watts engaged in this scheme with long-time Gambino associate Vincent Russo, who had assisted Watts in an earlier scheme to defraud involving the sale of defective phone cards.

Watts introduced himself to American Blast's prospective business partners – including the product manufacturer (BioBotanica) and a key distributor (the Hamza brothers) – as "Joseph Russo" because he did not want American Blast's partners to know that he was Joseph Watts. Watts suspected – quite rightly, as it turns out – that if his prospective partners knew that he was a powerful Gambino associate who had already been convicted or a murder conspiracy and money laundering, they would not have done business with American Blast. By misrepresenting his identity, Watts was ultimately able to convince BioBotanica to extend Watts credit in the fall of 2008 by allowing Watts to receive the manufactured beverage prior to paying for it. Biobotanica was not paid back in full. More than $45,000 was owed to Biobotantica at the time of Watts's arrest. Similarly, the Hamza Brothers agreed to purchase approximately $500,000 of American Blast product, relying on Watts (who they knew as "Russo") to market the product and support their sales efforts. Had they known of Watts's identity the Hamza brothers would not have agreed to purchase this product from Watts and counted on his ability to market it. Numerous mailings (such as invoices) and wires (such as phone calls) were used in connection with the scheme.

5. Commercial Bribery

Commercial bribery is a racketeering activity specified in the Indictment as an object of the racketeering conspiracy charged in the Indictment. (Indictment ¶¶ 15(c)).

Watts paid cash bribes to an executive from Bi-Botanica (Frank D'Amelio, Jr. the son of the owner and Executive Vice President) in order to obtain various benefits from Bio-Botanica that he was not entitled to. Watts paid $100,000 in cash to D'Amelio Jr. in order to obtain the formula for the American Blast drink (which would allow Watts to take the manufacturing of the beverage to another maker – which in fact he did– and which, therefore, Bio-Botanica did not ordinarily sell to its customers). Watts paid another $35,000 cash to D'Amelio Jr. through Vincent Russo in order to obtain a container of the beverage "out the back door." As a result of accepting these payments, D'Amelio Jr. felt beholden to Watts and obligated to continue shipping product and to not press too hard about the debt that Watts was beginning to incur with Biobotanica.

6. Extortion – Brian Richmond

BioBotanica's COO, Brian Richmond, asked Watts repeatedly to repay money owed to BioBotanica. On January 8, 2009 Brian Richmond e-mailed an assistant of Watts's as to when the outstanding balance owed to American Blast would be paid, noting that "we certainly want to support your business but we also need to make some money and manage our cash flow." Shortly after sending it, Watts left a voicemail with Richmond in which, in an angry tone, he accused Ricmond of failing to check the mail before asking if the check had arrived (an irrelevant issue, since no check had been mailed) and then told Richmond he did not want BioBotanica's "support – not now, not ever." Watts closed the voicemail by demanding "Who do you think you're dealing with" before pausing and adding "children? Richmond believed that Watts had left the message to intimidate him and, by this point, concluded that Watts was likely an organized crime figure.

7. Money Laundering

The Indictment charges that the conspiracy involved multiple acts of money laundering, in violation of 18 U.S.C. §§ 1956 and 1957. ¶15(f).

a. Laundering of Loansharking Proceeds Through Florida Properties / EDNY Conviction

On June 4, 2002, Watts pleaded guilty to Count One of Indictment S1-01-Cr-11 in the Eastern District of New York. Count One charged that Watts conspired with Dominick Borghese (who became a cooperating witness) to commit money laundering to conceal the proceeds of his loansharking activity. The Indictment alleged that Watts used a straw buyer (Jack Pietruszka) to purchase the estate and to fund the renovation of the estate (using Pietruszka as a front) with loansharking proceeds. In 1995, after Watts was indicted in the EDNY on murder and racketeering charges, Pietruszka (the straw buyer) “sold” the estate to Anthony DeLorenzo – an associate of Watts’s – for approximately $1.2 million, without engaging in any bidding process, and notwithstanding that the estate was valued at close to $4 million. Approximately $750,000 from the sale (the net proceeds) was ultimately transferred by Pietruszka to an attorney selected by Watts to a Swiss bank account controlled by Watts (the “Swiss Bank Account”).

In his plea allocution Watts admitted that “after 1996 I agreed with others to take money which was my proceeds of my loan-sharking activity and entered into financial transactions in the State of Florida designed to conceal the source of my money. One such transaction was . . . the purchase of boats and vans.” Though Watts did not specifically allocute to it, the Count to which he pleaded guilty, and on which a judgment of one million dollars in forfeiture was based, also involved (and in fact was largely based upon) Watts’s purchase in the 1980s of a Florida estate and his subsequent renovation of the estate through these loansharking proceeds and involving the same straw purchasers.

2. Laundering of Funds Through John McNally from 1999-2002

In 1999, before Watts was indicted in the 2001 EDNY money laundering case, but while the investigation was on-going, Watts transferred approximately $200,000 from the Swiss Bank Account to an account in John McNally's name at a Staten Island Bank. McNally then engaged in various financial transactions with these funds, including issuing a check for $150,000 to Robyn Watts after Watts had pled guilty in the EDNY case above.

. 3. Watts's Post-2006 Money Laundering

Watts was released from prison in May 2006 and engaged in multiple additional acts of money laundering of Gambino-related criminal proceeds, including money made in a phone card scam and loansharking proceeds.[4] The most prominent examples are as follows:

a. Funding of American Blast With Criminal Proceeds Held By Anthony DeLorenzo

Watts was released from BOP custody (following his guilty pleas in the EDNY to murder conspiracy and money laundering) in approximately May 2006. Watts had millions of dollars of Gambino Family earnings that he held in a way to conceal his ownership. Anthony DeLorenzo, who had purchased Watts's Florida properties for far less than market value from Pietruszka in the 1990s, owed Watts money. Watts arranged to obtain some of this money causing DeLorenzo to wire over $700,000 to a new company Watts created, American Blast, which was to distribute

[4] The Government intends to seek a superseding indictment shortly that will eliminate references and charges concerning D'Amico and add several substantive offenses with respect to Watts that cover the same conduct set forth in this enterprise memorandum and alleged to be part of the RICO conspiracy. These substantive charges will address Watts' recent money laundering, as described in this section of the enterprise memorandum and his post-2006 extortion, also as described in this memorandum. As the substantive charges address conduct previously alleged as part of the RICO conspiracy and that is detailed in this memorandum, and as the charges will not result in any new discovery or other material, they should have no impact on defense preparations or scheduling.

an "energy drink" similar to Red Bull.[5] Watts funneled other criminal proceeds into American blast including funds held by his daughter and his associate Vincent Russo.

b. Using American Blast As Vehicle To Dispose Of Criminal Proceeds Held As Cash

Watts used American Blast in part as a cash business in order launder some of his illegal cash proceeds. For example, Watts paid approximately $135,000 cash to Frank D'Amelio, an employee of American Blast in order to buy the formula for the product and some actual product (and to obtain some control over D'Amelio) at a time when American Blast had little in its bank accounts. Robyn Russo, Watts's daughter, paid $8,000 cash to one of American Blast's employees according to that employee (Mark Morales), at a time when bank records show that American Blast was low on funds in its bank account.

Watts also used American Blast to write checks to pay Gambino Family interests and thus further Gambino criminal activity. Watts funneled approximately $30,000 to Danny Marino, Jr., the son of Gambino Capo Danny Marino with whom Watts has historically been very close, though Danny Marino, Jr. did little for American Blast. American Blast – at Watts's direction – paid approximately $12,000 to John McNally (the PI long associated with Watts) nominally to pay for "investigations" relating to American Blast, of which there were none. McNally, among other things, paid Watts's American Express from McNally's bank account.

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5 As proof that DeLorenzo had obtained a Florida property that truly belonged to Watts for far below market value – and therefore owed Watts several million dollars after the sale, which he would have to secretly funnel to him– the Government will offer proof that Watts arranged for DeLorenzo to transfer a total of $400,000 to Watts's attorney to partially satisfy Watts's forfeiture obligations in the EDNY case. Even after these payments, DeLorenzo owed Watts hundreds of thousands more. DeLorenzo has therefore done other favors for Watts relating to this debt, such as renting Watts an apartment on the Upper East Side.

c. Money Laundering / Extortion – Jamie Ahn Inc.

In 2007, Watts offered to fund a new cosmetics business that his then-girlfriend, Jamie Ahn, wished to start. Watts arranged for a corporation to be opened – Jamie Ahn, Inc. – and funded through various sources, including funds held in bank accounts controlled by his daughter (who had received criminally derived property previously, including approximately $150,000 from John McNally that had been funneled through Watts's Swiss bank account and constituted proceeds of loansharking, and had received money from Watts directly). Watts then installed his daughter as the head of the corporation and they begin opening bank accounts in the corporation's name. Jamie Ahn Inc. was shut down without performing any substantial business and the remaining funds were transferred to American Blast.

In approximately March 2007 Watts offered to give Ahn a loan of $50,000 for her main business, the Townhouse Spa in Manhattan. Ahn accepted $50,000 in cash, which was delivered in hundred and twenty dollar bills. In December 2007 Ahn repaid the loan by writing a check from Townhouse Spa (her spa) to Showtime Travel, which was under the control of Watts's associate Vincent Russo. The memo on the check from Townhouse Spa, which was not written by Ahn, said the check was for "services rendered" although Showtime Travel had provided no services to the Townhouse Spa.

In connection with the Jamie Ahn Inc. business, Watts provided a check for $37,500 to a Long Island doctor, Joseph Vagnini, to help develop the Jamie Ahn, Inc. product line. Watts was not satisfied and demanded the money back from Dr. Vagnini and his nephew in a threatening manner; the funds were returned in part as cash.

d. Money Laundering, Loansharking, Extortion – Abe Berger & Brian Greenwald

The following conduct, initiated while Watts was in prison, took place primarily during the period after Watts's release from prison in May 2006 and his arrest in January 2009. During this period, Watts took further steps to launder criminally derived proceeds, to extend loansharking loans, and to engage in extortion when an individual charged with laundering Watts's money failed to return it.

Laundering through Berger. Watts met Abe Berger while incarcerated together and admired Berger's stock-picking abilities. When Berger was released in approximately September 2001, an individual sent by Watts left approximately $350,000 to $400,000 of Watts's money – all cash – with Berger and asked Berger to invest it. The investments failed and Watts demanded the money back in 2002. Berger made some payments to an individual representing Watts towards this debt beginning in 2002 but could not keep up with the payments.

Extortion of Berger. Berger did not fully repay the money owed to Watts and Watts begin threatening him. Vinny Russo assisted Watts in these collection efforts. On one occasion, Watts and Russo confronted Berger in a room in one of Brian Greenwald's diamond district offices and threatened and then attacked Berger. On a subsequent occasion, Watts threatened Berger in the lobby of a Manhattan office building and pushed Berger into a wall. Greenwald then paid Watts the $100,000 that Berger owed with the intention of collecting the money from Berger.

Laundering through Greenwald – replacing old cash. Watts gave Greenwald approximately $70,000 in old twenty dollar bills to purchase a an illegally acquired diamond and then sell it for a profit. Watts requested that the money and profit be paid back in new $100 dollar bills, which Greenwald did.

Attempted laundering through Greenwald – "clean" money for diamonds. Watts and his daughter, Robyn Watts, also attempted to launder diamonds through Greenwald. Watts provided $300,000 in diamonds to Greenwald to sell and requested "clean" money back issued in a check to his daughter. Greenwald was unable to sell the diamonds.

Attempted laundering through Greenwald – transferring money held by Watts in Europe. Watts sought to use Greenwald to obtain $1-2 million in criminal proceeds that he had off shore, asking Greenwald to send the money through jewelry contacts in Belgium. Greenwald did not do so.

Loansharking through Greenwald and Berger. Watts also loaned at least approximately $100,000 in loanshark money to Greenwald. Watts issued a $50,000 loanshark loan to a friend of Berger's, Sammy.

e. Money Laundering Post-Incarceration

Shortly after Watts was arrested and incarcerated he arranged to have money transferred into the commissary accounts of various prisoners. Watts's daughter and American Blast employees arranged for these transfers to prisoners and the transfers were made using the names of other people to hide that the source of the funds was Watts.

8. Obstruction of Justice

Obstruction of justice is a racketeering activity specified in the Indictment as an object of the racketeering conspiracy charged in the Indictment. (Indictment ¶¶ 15(f)).

In 2001 Watts was prosecuted in the Eastern District of New York for money laundering. The gravaman of the charge, as described above, was that Watts had earned millions of dollars as a loanshark with the Gambino Family and had used those loansharking proceeds to acquire a Florida compound consisting of several properties. The Government alleged that Watts had put the properties in the name of a Staten Island cabinet maker, Jack Pietruszka, to hide these invested criminal proceeds from the Government and that when the FBI began scrutinizing Watts and his property ownership in the mid-1990s Watts arranged for Pietruszka to "sell" the properties for far less than market value to another straw buyer, art dealer Anthony DeLorenzo, another long-time associate of Watts's..

Trial commenced in June 2001. At trial, the Government introduced evidence that following the "sale" of the property by Pietruszka to DeLorenzo, Pietruszka caused the net proceeds from the transactions, approximately $725,000, to be wired to a Swiss bank account controlled by Watts.

Pietruszka testified at trial, called by the Government as a hostile witness. Pietruszka acknowledged that he had transferred the $725,000 to Watts following the sale of the property to DeLorenzo but claimed that, despite his own serious financial problems, he had simply felt inclined to loan the money to Watts. One problem with this defense: the "loan," many years later, had not been repaid.

The trial against Watts ended with the jury hanging on the money laundering counts in July 2001. A retrial was set for August 2002. On August 30, 2001, the month after the original trial, Jack Pietruszka received two wire transfers totaling $624,950 from Joseph Watts. Pietruszka received a note from Watts stating that the $624,950 wire transfer was a partial repayment of a loan. Pietruszka held the money in a bank account, using some to cover his attorney fees. The retrial never took place. Watts pled guilty to one count of money laundering on June 4, 2002. Since a retrial was no longer necessary – and there was no longer good reason to repay the "loan" to Pietruszka – Watts, though an attorney, collected the entire $624,950 that had been sent to Pietruszka (from both Pietruszka and an attorney representing Pietruszka who had received some of the money). The Watts attorney used most of the funds to pay forfeiture and other funds were deposited into the bank account Joseph Watts's daughter. The payments to Pietruszka were designed to insure that a witness who had testified falsely in the initial trial did so again and to bolster the false defense that there genuinely had been a loan between Pietruszka and Watts.[6]

C. Legal Principles

All of the evidence proffered above is admissible at trial on several bases.

1. Predicate Offenses Charged In The Racketeering Conspiracy

Most of the evidence proffered above is admissible, first, because it is direct proof of the specific pattern of racketeering activity charged in the Indictment. Count One of the Indictment charges that Watts conspired to participate in a pattern of racketeering activity comprised of multiple state and federal law violations. Specifically, the Indictment charges multiple state law violations involving murder, gambling and commercial bribery. The charged federal law violations include extortion, loansharking, obstruction of justice, witness tampering, money laundering, mail fraud and wire fraud. (Indictment ¶ 15).

Watts's participation in and knowledge of the charged underlying criminal activity is therefore directly relevant and admissible here to prove the charged racketeering conspiracy. The Second Circuit has held that, to prove that a defendant participated in a racketeering conspiracy, the Government need only show that the defendant agreed that either he or other co-conspirators would commit two or more underlying predicate acts:

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[6] These financial transactions are also additional acts of money laundering, , in violation of 18 U.S.C. §§ 1956 and 1957, as well as additional proof that Pietruszka was simply a phony straw holder of Watts property in Florida had no genuine interest in the proceeds of the sale.

> To establish a RICO conspiracy, the government must prove that a defendant agreed to participate in the affairs of the enterprise through a pattern of racketeering activity. However, in Salinas v. United States, 522 U.S. 52 (1997) (alternate citations omitted) , the Supreme Court made clear that to establish this pattern, the government need not prove that the defendant himself agreed that he would commit two or more predicate acts. See id. at 64(noting that, although the RICO statute "broadened conspiracy coverage by omitting the requirement of an overt act; it did not, at the same time, work the radical change of requiring the government to prove [that] each conspirator agreed that he would be the one to commit two predicate acts."). Indeed, Salinas held that to be found guilty of RICO conspiracy, a defendant need only know of, and agree to, the general criminal objective of a jointly undertaken scheme.

United States v. Yannotti, 541 F.2d 112, 122 (2d Cir. 2008) (internal citations omitted). Thus, the Government may prove a defendant's participation in a racketeering conspiracy either by proving (1) that the defendant himself participated in at least two predicate acts, or (2) that the defendant agreed that other co-conspirators would commit at least two predicate acts. All of the above proffered evidence goes to both of these points: the evidence shows that not only did Watts know that his co-conspirators would commit the specified predicate offenses, but that Watts himself directly participated in those crimes.[7]

2. Nature And Existence Of Charged Racketeering Enterprise

To the extent that the above proffered evidence does not specifically constitute the charged racketeering activity, the evidence is independently admissible to prove the existence, nature, background, and membership in, the charged enterprise. In a racketeering case, the Government must prove (a) the existence of the racketeering enterprise alleged in the indictment, and (b) a "pattern of racketeering activity." See 18 U.S.C. §§ 1959(a), 1961(5), 1962(c), 1962(d). The Second Circuit has repeatedly held that the Government may prove the existence and nature of the racketeering enterprise, as well as the pattern of racketeering activity, by offering evidence of crimes committed by persons associated with the enterprise that are not specifically charged in the indictment. See United States v. Diaz,176 F.3d 52, 79 (2d Cir.), cert. denied, 528 U.S. 875 (1999); United States v. Miller, 116 F.3d 641, 682 (2d Cir. 1997), cert. denied, 524 U.S. 905 (1998). This rule applies to criminal acts committed by the charged defendants, as well as acts committed by other members of the enterprise. United States v. Brady, 26 F.3d 282, 286-88 (2d Cir.) (Section 1959 case), cert. denied, 513 U.S. 894 (1994); United States v. DiNome, 954 F.2d 839, 843 (2d Cir.), cert. denied, 506 U.S. 830 (1992).

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[7] Rule 404(b) is not relevant here because the evidence constitutes direct proof of elements of the crimes charged in the racketeering counts of the Indictment. See, e.g., Coonan, 938 F.2d at 1561 (determining admissibility of uncharged criminal act evidence in a RICO case without regard to Rule 404(b)).

Thus, in United States v. Diaz, a racketeering case, the Second Circuit affirmed the district court's decision to admit testimony concerning uncharged crimes – including drug trafficking, the stockpiling of weapons to protect the gang's drug trade, and acts of violence committed on behalf of the gang – because "it tended to prove the existence, organization and nature of the RICO enterprise, and a pattern of racketeering activity by each defendant-appellant." 176 F.3d at 79. Similarly, in United States v. Miller, the Second Circuit held that evidence "of numerous killings by" members of the racketeering enterprise was properly admitted "as proof of the existence of the RICO enterprise alleged in the indictment which used such acts of violence in furtherance of its narcotics conspiracy." 116 F.3d at 682.

In United States v. DiNome, the Second Circuit recognized the propriety of demonstrating the existence of a racketeering enterprise through its members' violent acts, regardless of whether those acts were expressly charged in the indictment. The Court stated:

> [E]vidence of numerous crimes, including the routine resort to vicious and deadly force to eliminate human obstacles, was relevant to the charges against each defendant because it tended to prove the existence and nature of the RICO enterprise . . . . Such evidence was also relevant to prove a pattern of racketeering activity by each defendant.

954 F.2d at 843. Similarly, in United States v. Coonan, the Second Circuit stated that evidence of extreme acts of violence by members of a RICO enterprise "was certainly probative of the existence of the charged enterprise." 938 F.2d at 1561.

In sum, evidence of uncharged acts is routinely admitted in racketeering trials in this Circuit. See United States v. Thai, 29 F.3d 785, 812-13 (2d Cir.) (uncharged acts admissible as evidence of "the existence and structure of the [RICO] enterprise"; such acts are not "other" crimes evidence governed by Fed. R. Evid. 404(b)), cert. denied, 513 U.S. 977 (1994); United States v. Coonan, 938 F.2d 1553, 1561 (2d Cir. 1991) (evidence of uncharged acts of extreme violence by members of a RICO enterprise "was certainly probative of the existence of the charged enterprise"), cert. denied, 503 U.S. 941 (1992); United States v. Kaplan, 886 F.2d 536, 543-44 (2d Cir. 1989) (continuity of a pattern of activity may be established by evidence of uncharged acts), cert. denied, 493 U.S. 1076 (1990); United States v. Indelicato, 865 F.2d 1370, 1382-83 (2d Cir.) (en banc) (where predicate acts are closely related in time, facts external to those acts may be offered to establish continuity requirement), cert. denied, 491 U.S. 907 (1989). Here, all of the proffered evidence goes either to the violations specifically listed at paragraph 17 of the Indictment, and/or to the "Means and Methods" specifications set forth at paragraphs 19 through 32 of the Indictment.[8]

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[8] Again, Rule 404(b) does not enter into the analysis. As the Second Circuit has held, evidence of uncharged acts are admissible as evidence of "the existence and structure of the [RICO] enterprise," and such acts are not "other" crimes evidence governed by Fed. R. Evid. 404(b). United States v. Thai, 29 F.3d at 812-13.

3. Background Of The Conspiracy And Relationships Between Co-Conspirators

The proffered evidence is also independently admissible to "'inform the jury of the background of the conspiracy charged,' 'to complete the story of the crimes charged,' and to 'help[] explain to the jury how the illegal relationship between [participants in the crime] developed.'" United States v. Roldan-Zapata, 916 F.2d 795, 804 (2d Cir. 1990) (quoting United States v. Brennan, 798 F.2d 581, 589-90 (2d Cir. 1986), and United States v. Harris, 733 F.2d 994, 1006 (2d Cir. 1984)). See also Diaz, 176 F.3d at 79-80; United States v. Inserra, 34 F.3d 83, 89 (2d Cir. 1994) ("evidence of other bad acts may be admitted to provide the jury with the complete story of the crimes charged by demonstrating the context of certain events relevant to the charged offense"); United States v. Lasanta, 978 F.2d 1300, 1307 (2d Cir. 1992) (evidence of other crimes is admissible "to delineate the background details of a conspiracy -- to 'inform the jury of the background of the conspiracy charged, to complete the story of the crimes charged, and to help explain to the jury how the illegal relationship between the participants in the crime developed.'"); Coonan, 938 F.2d at 1561 ("'[T]he trial court may admit evidence that does not directly establish an element of the offense charged, in order to provide background for the events alleged in the indictment.'").

4. Rule 403

The proffered evidence is directly probative of the charged crimes, and will not be unduly prejudicial, confusing, or wasteful for purposes of Fed. R. Evid. 403. First, as discussed above, all of the proffered evidence goes directly to issues at the heart of the Indictment: the fact that Watts conspired to participate in a racketeering enterprise; the specific nature of Watts's participation in the charged enterprise, and Watts's own conduct constituting that participation;

the nature, structure, and membership of the enterprise; and the relationships between Watts and his co-conspirators.

In assessing the potential for undue prejudice under Rule 403, the Court should consider whether the proffered evidence of other acts is more or less inflammatory than the specifically charged crimes. In United States v. Williams, 205 F.3d 23, 33-34 (2d Cir. 2000) the Second Circuit found that there was no undue prejudice where the evidence of certain prior acts was not more serious than the specifically charged conduct. Similarly, in United States v. Pitre, the Second Circuit found that the danger of unfair prejudice is lessened if "other acts" evidence involves crime of equal or less seriousness than the charged crimes. Here, the proffered evidence of other acts is no more inflammatory than the specifically charged pattern of racketeering activity in Count One, , which includes murder and other violent crimes.

The district court can further guard against any potential undue prejudice by instructing the jury about the proper and improper uses of the "other crimes" evidence. Such an instruction serves as an appropriate "final protection" against possible prejudice. See United States v. Levy, 731 F.2d 997, 1002 (2d Cir. 1984). Juries are presumed to follow judicial instructions. United States v. Salameh, 152 F.3d 88, 116 (2d Cir. 1998).

D. Conclusion

By this memorandum, the Government advises the Court and the defense of acts committed by Watts and others in furtherance of the charged racketeering enterprise, the Gambino Family. Should the defense have any additional questions, counsel may contact the Government. To the extent that the Government learns before or during the trial of additional conduct, the Government will provide prompt notice to the Court and defense counsel.

Respectfully submitted,

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AFFIRMATION OF SERVICE

ARLO DEVLIN-BROWN affirms under penalty of perjury pursuant to 28 U.S.C. § 1746 the following:

That on July 30, 2010, I caused to be served by ECF one copy of the within Government's Notice of Enterprise Evidence to be served on defense counsel. .

/s/ Arlo Devlin-Brown
Assistant United States Attorneys
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